No. 82-1711

IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

THE STATE OF COLORADO,
Petitioner,

vs.

FIDEL QUINTERO,
Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF COLORADO

BRIEF OF AMICUS CURIAE COLORADO DISTRICT ATTORNEYS COUNCIL

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QUESTION PRESENTED FOR REVIEW

Whether this Court should adopt an exception to the Fourth Amendment Exclusionary Rule to permit the admissibility of evidence which would otherwise be suppressed, in situations where law enforcement officers act with an objective, good faith belief that their conduct is proper.

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This brief is filed pursuant to Rule 36 of the Supreme Court Rules. Consent to file has been granted by Counsel for the parties, and letters of consent of the parties have been filed with the Clerk of this Court.

INTEREST OF AMICUS

The Colorado District Attorneys Council is a separate legal entity comprised of members of the District Attorney's Offices in the twenty two Colorado Judicial Districts.

The Council provides programs of education, training, publications, and administrative assistance to the various District Attorney's Offices in the State of Colorado; these programs are intended to implement the Council's goal of promoting, fostering and encouraging an effective administration of justice in

Colorado and helping to ensure the safety of the public and the protection of the constitutional rights of accused persons.

Because it is an association of prosecuting attorneys, the Council is well aware of the problems faced by state and federal law enforcement officers in their daily efforts to deal with an increasing crime rate by using investigative procedures that comply with rapidly-changing judicial decisions interpreting the provisions of the Fourth Amendment. As prosecuting attorneys, the members of the Council must offer guidance to law enforcement officers as well as account to the public in situations where the courts have suppressed critical evidence which was seized in good faith by the police. It is the position of the Council that the Exclusionary Rule, enforced as an absolute, no longer serves the purpose for which it was originally adopted or the

needs of society.

STATEMENT

In the case of People v. Quintero, 657 P.2d 948 (Colo., 1983), the Colorado Supreme Court held that the police had no probable cause to arrest Quintero, despite the fact that he had been observed prowling around a house in a residential neighborhood and was later contacted at a nearby bus stop carrying a television set which he was trying to hide under his shirt. The Court refused to apply a Colorado Statute, Section 16-3-308, C.R.S. 1973, as amended, which codified much of the reasoning adopted by the members of this Court who have advocated the adoption of a good faith exception to the Exclusionary Rule. In its opinion, the Colorado Supreme Court noted that this Court had never adopted such a good faith exception, and that the Colorado Court was not inclined "to alter established Fourth

Amendment doctrine by approving such an exception," under either the Colorado statute or an interpretation of this Court's Fourth Amendment rulings. People v. Quintero, supra, at 950.

SUMMARY OF ARGUMENT

The issue of whether this Court should adopt a good faith exception to the Exclusionary Rule is ripe for determination under the facts of this case. Amicus respectfully urges this Court to adopt such an exception to the rule in all appropriate cases where the facts establish that the police acted with an objective, good faith belief that their conduct conformed to the requirements of the Fourth Amendment.

ARGUMENT

IF THIS COURT FINDS THAT THE EVIDENCE IN THIS CASE WAS OBTAINED IN VIOLATION OF THE FOURTH AMENDMENT, IT SHOULD

ADOPT AND APPLY AN EXCEPTION TO THE FOURTH AMENDMENT EXCLUSIONARY RULE THAT WOULD PERMIT THE ADMISSION OF EVIDENCE SEIZED BY LAW ENFORCEMENT OFFICERS WHO HAVE ACTED WITH AN OBJECTIVE, GOOD FAITH BELIEF THAT THEIR CONDUCT WAS PROPER.

"The exclusionary rule was a judicially created means of effectuating the rights secured by the Fourth Amendment... the primary justification for the exclusionary rule then is the deterrence of police conduct that violates Fourth Amendment rights." Stone v. Powell, 428 U.S. 465, 482, 486 (1976). The Exclusionary Rule, therefore, has as its primary goal the deterrence of police misconduct rather than the facilitation of the truth seeking process at trial.

"The costs of applying the

exclusionary rule even at trial and on direct review are well known: the focus of the trial, and the attention of the participants therein, are diverted from the ultimate question of guilt or innocence that should be the central concern in the criminal proceeding. Moreover, the physical evidence sought to be excluded is typically reliable and often the most probative information bearing on the guilt or innocence of the Defendant." Stone v. Powell, supra, at 489-490 (footnotes omitted). As this Court so aptly observed in Rakas v. Illinois, 439 U.S. 128 (1978), the Exclusionary Rule exacts a substantial social cost each time it is applied and relevant, reliable evidence is excluded.

The truth-seeking process is often hindered - if not defeated - by the suppression of probative, valuable evidence. "The disparity in particular

cases between the error committed by the police officer and the windfall afforded a guilty Defendant by application of the rule is contrary to the idea of proportionality that is essential to the concept of justice." Stone v. Powell, supra, at 490 (footnotes omitted).

The issue of proportionality also arises during consideration of the type of police conduct being regulated. Under the Exclusionary Rule as it currently exists, there is no differentiation between minor, unintentional Fourth Amendment violations and egregious misconduct on the part of the police. In either case, the police are faced with the same sanction: the suppression of any evidence obtained. The problem with such an approach is most apparent and least tolerable in situations where the evidence suppressed was initially seized by the officers in good faith.

In the cases of Michigan v. Tucker, 417 U.S. 433 (1974), and U.S. v. Peltier, 422 U.S. 531 (1975), this Court recognized that the deterrance rationale of the Exclusionary Rule was not met in situations where the officers had seized evidence in good faith:

> "The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right. By refusing to admit evidence gained as a result of such conduct, the courts hope to instill in those particular investigating officers, or in their future counterparts, a greater degree of care toward the rights of an accused. Where the official action was pursued in complete good faith, however, the deterrence rationale loses much of its force." 417 U.S. at 447, 422 U.S. at 539.

The Court in Peltier continued, 422 U.S. at 542:

> "If the purpose of the exclusionary rule is to deter unlawful police conduct, then evidence obtained from a search should be suppressed only if it

> can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment."

If, at the very least, the Exclusionary Rule is designed to act as a guideline to which law enforcement officers can conform their conduct during investigations of crime, the rule loses much of its effectiveness in cases where the officers clearly conform their conduct to their knowledge of the Fourth Amendment, but are later told that they were mistaken and that the evidence seized will be suppressed. Far from deterring unlawful police conduct, such incidents often serve to make the police overly cautious in conducting legitimate investigations. Such a "chilling effect" upon police performance of their duties can only result in a loss to society as a whole. As one court has observed, "it

makes no sense to speak of deterring police officers who acted in the good-faith belief that their conduct was legal by suppressing evidence derived from such actions unless we somehow wish to deter them from acting at all." United States v. Williams, 622 F.2d 830, 847 (5th Cir. 1980), cert. den. 449 U.S. 1127 (1981).

In his concurring opinion in the case of U.S. v. Ceccolini, 435 U.S. 268 (1978), Chief Justice Burger noted that "the appropriate inquiry in every case in which a Defendant seeks the exclusion of otherwise admissible and reliable evidence is whether official conduct in reality will be measurably altered by taking such a course." 435 U.S. at 283.

Applying that inquiry to the facts of the instant case, it is clear that there is no logical rationale for altering or deterring any of the official conduct

which occurred in this case. The officers who arrested Quintero were confronted with a situation in which there was clear probable cause to arrest him for burglary. Quintero had been observed prowling around a house in a residential neighborhood on a weekday afternoon. Justifiably suspicious of his behavior, a neighbor called the police. When the police contacted Quintero shortly thereafter, he was standing at a bus stop in his undershirt; his shirt was covering a television set. These facts clearly provided a basis for the officers' belief that they had probable cause to make an arrest at that point. To act otherwise in such a situation would have been bad police work and a breach of the officers' duty to protect the community.

In the case of Stone v. Powell, supra, this court observed that "despite the broad deterrent purpose of the

exclusionary rule, it has never been interpreted to proscribe the introduction of illegally seized evidence in all proceedings or against all persons." 428 U.S. at 486. "Application of the rule has been restricted to those areas where its remedial objectives are thought most efficaciously served." U.S. v. Calandra, 414 U.S. 338, 348 (1974), U.S. v. Ceccolini, supra, 435 U.S. at 275.

Recognizing that objective, this Court has adopted numerous exceptions to the Exclusionary Rule through the years. U.S. v. Havens, 446 U.S. 620 (1980); Walder v. U.S., 347 U.S. 62 (1954) (allowing the use of illegally seized evidence for the purpose of impeaching a Defendant who testifies on his own behalf; U.S. v. Ceccolini, supra, (admitting the testimony of a live witness derived from a concededly unconstitutional search); Michigan v. DeFillippo, 443 U.S. 31 (1979)

(admitting evidence seized by law enforcement officers acting in good-faith reliance on a statute later held to be unconstitutional); Brown v. Illinois, 422 U.S. 590 (1975) (declining to adopt a rule that would make inadmissible any evidence which comes to light through a chain of causation that began with an illegal arrest). The adoption of a good faith exception to the exclusionary rule in cases where officers acted in a good faith, objective belief that their conduct was reasonable is the next logical step in this course of reasoning.

In U.S. v. Ceccolini, supra, this Court acknowledged that any analysis of the Fourth Amendment exclusionary rule must recognize "... not only the benefits, but the costs, which are often substantial...." 435 U.S. at 275, 98 S.Ct at 1060. Amicus respectfully submits to the Court that this case is one in which

the price paid for application of the Exclusionary Rule is extremely high.

In his concurring opinion in the case of Illinois v. Gates, 103 S.Ct. 2317 (1983), Justice White concisely summarized the current problem posed by a strict application of the Exclusionary Rule:

> "The exclusion of probative evidence where the constable has not blundered not only sets the criminal free but also fails to serve any constitutional interest in securing compliance with the important requirements of the Fourth Amendment."

Justice White went on to state as follows:

> "[T]he exclusion of evidence is not a personal constitutional right but a remedy, which like all remedies, must be sensitive to the costs and benefits of its imposition. The trend and direction of our exclusionary rule decisions indicate not a lesser concern with safeguarding the Fourth Amendment but a fuller appreciation of the high costs incurred when probative, reliable evidence is barred because of investigative error. The primary cost, of course, is that the exclusionary rule interferes with the truthseeking

> function of a criminal trial by barring relevant and trustworthy evidence. We will never know how many guilty defendants go free as a result of the rule's operation. But any rule of evidence that denies the jury access to clearly probative and reliable evidence must bear a heavy burden of justification, and must be carefully limited to the circumstances in which it will pay its way by deterring official lawlessness. I do not presume that modification of the exclusionary rule will, by itself, significantly reduce the crime rate - but that is no excuse for indiscriminate application of the rule."

Amicus wholeheartedly concurs with this analysis of the current state of the law surrounding the Exclusionary Rule, and respectfully urges this Court to reconsider and adopt a good faith exception to the Rule. Such an exception would allow the admission of relevant, probative evidence as long as the officer who seized that evidence is able to articulate his objective grounds for believing that he acted in accordance with

believing that he acted in accordance with

the law. The exception would not foster disregard for the law on the part of police officers, since ignorance of the requirements of the Fourth Amendment - with which the officer should have been familiar - would not warrant an exception to the Rule.

CONCLUSION

It is obvious that "the penalties visited upon the Government, and in turn upon the public, because its officers have violated the law must bear some relation to the purposes which the law is to serve." U.S. v. Ceccolini, supra, 435 U.S. at 279.

It is an unfortunate fact that public confidence in the workings of the judicial system has waned in recent years. One of the major reasons behind this erosion of confidence is the fact that the general public can neither comprehend nor accept the rationale behind excluding relevant,

probative evidence in criminal cases. This issue is no less critical to law enforcement officers, who are called upon to enforce the law but are often unable to anticipate or understand a subsequent suppression of the evidence obtained during their investigations.

The adoption of a good faith exception to the Exlusionary Rule will do much to advance the cause of good police work and to alleviate some of the public's dissatisfaction with and misunderstanding of the criminal justice system. It will also facilitate the trial process and provide some assurance that the search for truth by the trier of fact has not been deflected. Rakas v. Illinois, supra.

Amicus therefore respectfully requests that this Court adopt such a good faith exception to the Exclusionary Rule by reversing the decision of the Supreme Court of Colorado.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that on the 12th day of September, 1983, I placed in the United States Mail, postage prepaid and properly sealed and addressed, a copy of the foregoing Brief of Amicus Curiae to the parties of record in this case.

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